

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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JAMIL THOMAS,	:	
Petitioner,	:	
	:	
v.	:	No. 2:13-3645
	:	
JOHN E. WETZEL MICHAEL	:	
WENEROWICZ, THE ATTORNEY GENERAL	:	
OF THE STATE OF PENNSYLVANIA, and	:	
THE DISTRICT ATTORNEY OF	:	
PHILADELPHIA COUNTY,	:	
Respondents.	:	

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**O P I N I O N**

**Uncontested Report and Recommendation, ECF No. 30—Approved & Adopted**

**JOSEPH F. LEESON, JR.**  
**United States District Judge**

**December 31, 2020**

**I. INTRODUCTION & BACKGROUND**

On June 24, 2013, Jamil Thomas filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* ECF No. 1. In his petition, Thomas challenges the constitutionality of his sentence for first degree murder to a term of incarceration of life without the possibility of parole; the challenge was based on the Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460 (2012).<sup>1</sup> *See id.* On November 2, 2013, Judge Mary A. McLaughlin (the Judge to whom Thomas’s petition was originally assigned), referred the petition to Magistrate Judge Henry S.

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<sup>1</sup> On December 20, 2004, a jury found Thomas guilty of first-degree murder, criminal conspiracy, and possessing an instrument of crime. The court sentenced him to a mandatory term of life imprisonment for murder and consecutive prison terms of one to two years for conspiracy and three to twenty-three months for possessing an instrument of crime. The crimes of which Thomas was convicted occurred when Thomas was 15 years old.

Perkin for a Report and Recommendation (“R&R”). *See* ECF No. 6. By letter dated December 19, 2013, Thomas advised Judge Perkin that in addition to his *Miller* claim, he had eight other claims pending in state court. *See* ECF No. 9. On February 14, 2014, Judge Perkin issued an R&R in which he recommended that Thomas’s petition be amended to include the eight claims identified in his December 19, 2013 letter, and additionally that the petition be placed in “suspense” pending exhaustion of Thomas’s state court remedies. *See* ECF No. 15. This R&R was approved and adopted by Judge McLaughlin. *See* ECF No. 16. On July 1, 2015, this case was reassigned from Judge McLaughlin to the Undersigned. *See* ECF No. 17.

Between 2014 and 2018, Thomas litigated his claim for PCRA relief based on *Miller* in state court. On November 5, 2018, the Honorable Barbara A. McDermott of the Philadelphia Court of Common Pleas granted Thomas PCRA relief based on the Supreme Court’s decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), which held that the rule in *Miller* applied retroactively to cases on collateral review. Accordingly, Thomas was resentenced to a prison term of twenty-two and one-half years to life for murder; he received no further penalties for his other convictions. *See* Case No. CP-51- CR-1003182-2003, pp. 4, 18.

On February 7, 2020, noting the absence of any docket activity in this matter for several years, this Court issued an Order directing the parties to show cause why Thomas’s petition should not be dismissed as moot in light of his resentencing. *See* ECF No. 20. The Office of the District Attorney for Philadelphia County subsequently responded and requested that Thomas’s petition be referred to a Magistrate Judge for an R&R as to the remaining non-*Miller* claims, which remained unresolved. *See* ECF No. 23. On March 24, 2020, this Court referred the matter to Magistrate Judge Perkin for preparation of a second R&R. *See* ECF No. 24. On March 25, 2020, Judge Perkin Ordered Respondents to file a response to the eight claims in Thomas’s

December 19, 213 letter, *see* ECF No. 26, which they did on June 22, 2020 after being granted an extension of time to do so, *see* ECF No. 29. Thomas never filed anything further in support of the remaining claims in his habeas petition.

Judge Perkin issued his R&R on August 27, 2020. *See* ECF No. 30. In his R&R, Judge Perkin recommends that, pursuant to a *Poulis* analysis, Thomas's habeas petition be dismissed with prejudice for his failure to prosecute his claims. *See id.* Judge Perkin further recommends that no certificate of appealability be issued. *See id.*

The time for filing objections has come and gone, and neither party has objected to Judge Perkin's R&R.<sup>2</sup>

## II. STANDARD OF REVIEW

When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report—either *de novo* or under any other standard. *Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed.”). Nevertheless, the United States Court of Appeals for the Third Circuit has held that, notwithstanding the absence of objections, it is “better practice” to afford some level of review to dispositive legal issues raised in a Magistrate Judge's report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). Where no party objects to the findings and recommendations of a Magistrate Judge's report, the district court reviews the report for clear error. *Univac Dental Co. v. Dentsply Int'l, Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (“When no timely objection is filed, the court need only satisfy itself that

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<sup>2</sup> The R&R was inadvertently mailed to the wrong correction facility initially, *see* ECF No. 32; however, it was mailed to the correct facility on October 6, 2020.

there is no clear error on the face of the record in order to accept the recommendation.” (quoting FED. R. Civ. P. 72(b), advisory committee notes); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge’s report and recommendation for clear error).

### **III. DISCUSSION**

In the absence of objections, this Court has reviewed Judge Perkin’s R&R for plain error and has found none. The R&R outlines the factual and procedural history of this case prior to addressing the legal principles of exhaustion, procedural default, and ineffective assistance of counsel (as they relate to Thomas’s unresolved claims), as well as the standard of review applicable to habeas petitions generally. *See* ECF No. 30 at 1-12. Judge Perkin then discusses the legal standard for *sua sponte* dismissals of actions for a petitioner’s failure to prosecute as set forth by the Third Circuit in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir.1984). *See id.* at 12. After applying the *Poulis* factors to the circumstances of Thomas’s petition, Judge Perkin concludes that the factors weigh in favor of dismissal of Thomas’s petition for his failure to prosecute his non-*Miller* claims. *See id.* at 18.

The Court finds that Judge Perkin’s R&R astutely weighs the *Poulis* factors and correctly concludes that they weigh in favor of dismissal of Thomas’s petition for failure to prosecute. Indeed, as Judge Perkin points out, “[s]ince November 22, 2013, Petitioner has not filed anything in this case including a response to [the] February 7, 2020 Order to show cause.” ECF No. 30 at 7.

### **IV. CONCLUSION**

After review and in the absence of objections, this Court now adopts the findings and recommendations of Judge Perkin’s well-reasoned and thorough R&R. Thomas’s habeas corpus

petition is therefore dismissed, with prejudice, for his failure to prosecute his remaining non-*Miller* claims. Moreover, Thomas is not entitled to either an evidentiary hearing or a certificate of appealability.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.  
JOSEPH F. LEESON, JR.  
United States District Judge